



September 12, 2014

**Wayne R. Rohde**

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**VIA COURIER**

Ms. Karen V. Gregory  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Room 1046  
Washington, D.C. 20573

**Re: FMC Docket No. 14-11; Petition of LCL Logistix (India) Pvt.  
Ltd dba LCL Lines for a Declaratory Order**

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Dear Ms. Gregory:

Enclosed herewith for filing are an original and five (5) copies of the reply of MSC Mediterranean Shipping Company S.A. to the above-referenced petition.

A copy of this letter and its enclosures has been provided for your acknowledgement of receipt.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "Wayne Rohde", written over the printed name.

By: Wayne Rohde

Enclosures

BEFORE THE  
FEDERAL MARITIME COMMISSION

PETITION OF LCL LOGISTIX (INDIA)	)
PVT. LTD dba LCL LINES FOR A	)
DECLARATORY ORDER	)
	)

Docket No.  
14-11

**REPLY OF MSC MEDITERRANEAN SHIPPING COMPANY S.A.**

Pursuant to 46 C.F.R. §502.75(f)(2) and the Federal Maritime Commission's August 14, 2014 order in this docket, MSC Mediterranean Shipping Company SA ("MSC"), through its counsel, hereby submits its response to the petition for a declaratory order (the "Petition") filed with the Federal Maritime Commission ("Commission") by LCL Logistix (India) Pvt. Ltd dba LCL Lines ("LCL"). As explained in detail below, the Petition must be denied for failure to meet the standards set forth in 46 C.F.R. §502.75(b).<sup>1</sup>

Background

The Petition asks the Commission to issue an order declaring that MSC's legal action to collect unpaid demurrage on a shipment that it has transported from the United States to India constitutes an unreasonable practice in violation of Section 41102(c) of the Shipping Act, 46 U.S.C. §41102(c).

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<sup>1</sup> Because the Petition so clearly fails to meet the standards established by the Commission's regulations, it is not necessary to address the merits of the Petition in this reply. However, for the record, MSC's position is that the allegations contained in the Petition lack merit.

### The Applicable Legal Standard

The Petition, like all petitions for a declaratory order, is governed by 46 C.F.R. §502.75.

Among the other requirements established by this section of the Commission's regulations are the following:

The procedures of this section must be invoked solely for the purpose of obtaining declaratory rulings which will allow persons to act without peril upon their own view. Controversies involving an allegation of violation by another person of statutes administered by the Commission, for which coercive rulings such as payment of reparations are sought, are not proper subjects of petitions under this section.

46 C.F.R. §502.75(b). The Petition clearly and undeniably fails to meet these criteria and must be denied.

### The Petition Does Not Seek A Ruling Which Would Permit LCL To Act On Its Own View

The regulation quoted above limits the proper use of declaratory orders to a situation in which an entity or individual is seeking guidance on the lawfulness of some future course of conduct. In fact, the Commission has held repeatedly that declaratory orders are "intended to provide guidance to persons who have not yet acted and who desire a legal ruling on a proposed future course of action." *Petition of Olympus Growth Fund II, L.P. for a Declaratory Order*, 31 S.R.R. 718, 723 (FMC 2009) citing *Petition of Evergreen Marine Corp. (Taiwan), Ltd. & Worldwide Logistics, Inc. for Declaratory Order*, 26 S.R.R. 605, 607 (FMC 1992).

Despite this clear and well-established requirement, the Petition does not relate to any proposed future course of action on the part of LCL. Rather, it seeks a ruling on the lawfulness of past conduct by MSC, namely the application of demurrage charges to a past shipment. The Commission has denied petitions for declaratory orders when the activities upon which the petition was based have already occurred. *Petition of Olympus Growth Fund II, L.P. for a*

*Declaratory Order*, 31 S.R.R. 718, 723 (FMC 2009)(petition for ruling on lawfulness of past practice with respect to inland routing of shipments denied) citing *Rates Applicable to Ocean Shipment of AABCO, Inc. Filing of Petition for Declaratory Order*, 22 S.R.R. 762, 763 (FMC 1984)(petition for ruling on which of two rates lawfully applied to past shipment denied).

Because the Petition does not relate solely (or indeed, even partially) to a proposed future course of conduct on the part of LCL, it fails to meet the requirements of the Commission's regulations as these have been consistently interpreted by the Commission over time, and must be denied.

#### The Petition Improperly Alleges A Violation of the Shipping Act

The Petition seeks a ruling on a controversy involving an alleged violation of the Shipping Act by MSC, a person other than LCL. However, 46 C.F.R. §502.75 clearly states that an alleged violation of the Shipping Act by a third party (in this case, MSC) is not a proper subject of a petition for a declaratory order by LCL. The Commission has consistently held, in accordance with the plain language of the regulation, that the lawfulness of past and present conduct under the Shipping Act is inappropriate for disposition by declaratory order. *Petition of South Carolina State Ports Authority for Declaratory Order*, 27 S.R.R. 175, 181 (FMC 1995)(petition for ruling on lawfulness of past and present practice of port authority reserving terminal functions to itself denied). See also, *National Customs Brokers and Forwarders Association -- Petition for Declaratory Order and Other Relief*, 21 S.R.R. 208, 210 (FMC 1981)(request for declaratory order that conference forwarder compensation practices violated Shipping Act denied). Accordingly, the lawfulness under the Shipping Act of MSC's past and/or present efforts to collect demurrage on past shipments is not an appropriate issue for decision in a declaratory order, and the Petition must be denied.



### The Petition Improperly Seeks A Coercive Ruling Against MSC

The Petition seeks a ruling that MSC's attempt to collect demurrage represents a violation of the Shipping Act. Such a ruling, if issued, would effectively constitute a cease and desist order against MSC.<sup>2</sup> As the Commission has consistently ruled, coercive rulings (including cease and desist orders) are not appropriate subjects for declaratory orders.

For example, in *Service Contracts; Automatic Discount Provisions*, 25 S.R.R. 729 (FMC 1990), the Commission denied a petition for a declaratory order filed by two carriers, seeking a ruling that an automatic discount provision contained in the service contracts of a third carrier was contrary to the Shipping Act. In denying the petition, the Commission stated:

In the instant case, Petitioners are not seeking to act on their own view. They are instead seeking what amounts to a cease and desist order against one of their competitors.

25 S.R.R. at 732. After citing to the predecessor of section 502.75 (which contained language identical to the current regulation), the Commission went on to say:

Petitioners here are alleging violations of the 1984 Act and the Commission's regulations by ABC and are seeking a coercive ruling against ABC's practice of using ADPs.

As a result, and recognizing that petitions for declaratory orders are entirely within the Commission's discretion, that portion of the Petition seeking a declaratory order will be denied.

*Id.* The Commission should reach the same result with respect to the Petition in this docket.

### Conclusion

The Petition seeks a ruling on an alleged violation of the Shipping Act by a third party, MSC, and further seeks a coercive ruling against MSC. It in no way seeks a ruling which would

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<sup>2</sup> The Commission lacks the authority to determine the jurisdiction of a federal district court, which is what the Petition is effectively asking the Commission to do. Moreover, to the extent the district court determines the Commission's input is necessary or desirable, it can seek that input and, in fact, LCL has already asked the court to do so.

enable LCL to act on its own view of the lawfulness of some proposed course of future conduct. As a result, the Petition fails to meet the standards applicable to petitions for declaratory orders established by the Commission's regulations, as those regulations have been interpreted by the Commission in a number of decisions over the past 30 years. Accordingly, the Petition must be denied.

Respectfully submitted,



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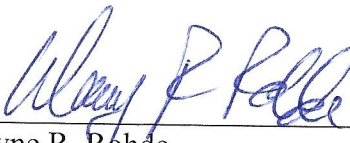
Counsel for MSC Mediterranean Shipping  
Company SA.

September 12, 2014

Certificate of Service

I hereby certify that I have this 12th day of September, 2014, served a copy of the foregoing Reply of MSC Mediterranean Shipping Company SA to the Petition of LCL Logistix (India) Pvt. Ltd dba LCL Lines for a Declaratory Order on the following via first-class mail, postage prepaid:

David P. Street, Esq.  
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Washington, D.C. 20007

  
Wayne R. Rohde